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THE SITUATION IN THE OCCUPIED TERRITORIES OF CROATIA

Report of the Secretary-General

I. INTRODUCTION

1. The present report is submitted pursuant to paragraph 11 of General Assembly resolution 49/43 of 9 December 1994.

2. By that resolution, the General Assembly inter alia:

"1. Expresses its commitment to ensure respect for the sovereignty and territorial integrity of the Republic of Croatia;

"2. Calls upon all parties, and in particular the Federal Republic of Yugoslavia (Serbia and Montenegro), to comply fully with all Security Council resolutions regarding the situation in Croatia, and to respect strictly its territorial integrity, and in this regard concludes that their activities aimed at achieving the integration of the occupied territories of Croatia into the administrative, military, educational, transportation and communication structure of the Federal Republic of Yugoslavia (Serbia and Montenegro) are illegal, null and void and must cease immediately;

"3. Requests the Federal Republic of Yugoslavia (Serbia and Montenegro) to cease immediately any military and logistic support to the self-proclaimed authorities in the Serbian-controlled parts of Croatia;

"4. Strongly condemns the Serbian self-proclaimed authorities in the Serbian-controlled territories of Croatia for their military actions that have resulted in ethnic cleansing of the United Nations Protected Areas, and for their constant refusal to comply with the relevant Security Council resolutions;

"5. Reaffirms its support for the principle that all statements of commitments in the Serbian-controlled parts of Croatia made under duress, particularly those regarding land and property, are wholly null and void;

"6. Reaffirms the right of all refugees and displaced persons from the area of the former Yugoslavia to return voluntarily to their homes safely and with dignity, with the assistance of the international community, and in this regard, notes that the 1991 census is the basis for defining the population structure of the Republic of Croatia;

"7. Urges the restoration of the authority of the Republic of Croatia in its entire territory and urges also the utmost respect for human and minority rights in the territory of Croatia, including the right to autonomy in accordance with the Constitution of the Republic of Croatia and established international standards, and for efforts to achieve a political solution within the framework of the International Conference on the Former Yugoslavia;

"8. Calls for mutual recognition between the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) within their existing internationally recognized borders;

"9. Commends the persistent efforts of the United Nations Protection Force in performing its duties in the territory of the Republic of Croatia, and in this regard emphasizes the importance of its role for the overall peace process and for the success of the peaceful reintegration of Serbian-controlled territories of Croatia;

"10. Also calls for full respect of the cease-fire agreements in the territory of Croatia, and urges the resumption of direct negotiations in close cooperation with the International Conference on the Former Yugoslavia;

"11. Requests the Secretary-General to submit to the General Assembly at its fiftieth session a comprehensive report on the implementation of the present resolution."

3. From its establishment in February 1992, the United Nations Protection Force (UNPROFOR) was deployed in four United Nations Protected Areas (UNPAs) under the control of local Serb authorities. The UNPAs comprised the Krajina (Sectors North and South), Western Slavonia (Sector West) and Eastern Slavonia, Baranja and Western Srem (Sector East). This situation continued for the first part of 1995, but several developments in the summer of 1995 dramatically altered the context in which resolution 49/43 had been adopted in December 1994.

II. DEVELOPMENTS

4. Since the conclusion of the cease-fire agreement of 29 March 1994, the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia and International Conference negotiators, in close consultation with the leadership in Zagreb, Knin and Belgrade, had sought to

encourage negotiations on practical issues of economic cooperation while simultaneously promoting discussion of ideas for a political settlement to the conflict in Croatia. These efforts culminated on 2 December 1994 with the conclusion of the economic agreement (S/1994/1375, appendix I) and its partial implementation through the reopening of the Zagreb-Belgrade highway through Sector West to Lipovac on 21 December 1994.

5. However, on 12 January 1995, the President of the Republic of Croatia, Mr. Franjo Tudjman, announced the withdrawal of Croatian consent to the extension of the mandate of UNPROFOR beyond its expiration on 31 March 1995. Informing me of this decision, President Tudjman stated that "Croatia's overall experience during the past two years" had brought him to the conclusion "that, although UNPROFOR has played an important role in stopping violence and major conflicts in Croatia, it is an indisputable fact that the present character of the UNPROFOR mission does not provide conditions necessary for establishing lasting peace and order in the Republic of Croatia, a sovereign State Member of the United Nations" (A/50/64-S/1995/28, annex).

6. Mindful of the decisive role played by the United Nations in halting the war on Croatian soil three years before, as well as of the part played by UNPROFOR in preventing a full-scale resumption of hostilities, I presented an interim report to the Security Council on 14 January in which I expressed profound regret at this decision and grave concern "about the risk of renewed hostilities should United Nations peace-keepers be withdrawn from Croatia" (S/1995/38). On 17 January, while stating that "it will not accept the status quo becoming an indefinite situation", the Security Council expressed its belief that the continued presence of UNPROFOR in the Republic of Croatia was of vital importance for regional peace and security (S/PRST/1995/2).

7. The following two months were characterized by a significant escalation in military activity and tension, as described in my report to the Security Council of 22 March 1995 (S/1995/222), in which, inter alia, I recommended the restructuring of UNPROFOR. By resolution 981 (1995), the Security Council approved the establishment of the United Nations Confidence Restoration Operation in Croatia, which is known as UNCRO, and requested me to continue consultations with all concerned on the detailed implementation of its mandate. Meanwhile, Mr. Thorvald Stoltenberg, acting as my Special Envoy, had carried out consultations on a plan for the implementation of the UNCRO mandate, which were finalized on 18 April 1995. It was not without misgivings that I presented that plan to the Security Council, as I noted that it did not have the formal acceptance and full support of either the Government of Croatia or the local Serb authorities. The risk therefore remained that either or both sides would fail to cooperate with the United Nations in its implementation (S/1995/320). On the basis of that report, the Security Council authorized the deployment of UNCRO on 28 April 1995 (resolution 990 (1995)).

8. Two days later, on 1 May 1995, the Croatian Army launched a military offensive in the area of Western Slavonia known as Sector West. The Security Council issued a statement urging an immediate end to the military offensive, respect for the economic agreement of 2 December 1994 and compliance with the existing cease-fire agreement (S/PRST/1995/23). Continuing hostilities marked by attacks and reprisals led the Council to issue a further statement on

4 May 1995, condemning, inter alia, "incursions into the zones of separation by the forces of the Government of Croatia in sectors North and South, and by both sides in Sector East". The Council also condemned the "bombardment of Zagreb and other centres of civilian population by the forces of the local Serb authorities" and demanded their immediate cessation (S/PRST/1995/26). The Croatian Army's takeover of Sector West was completed on 4 May 1995.

9. Over 10,000 civilians and military personnel living in areas immediately affected by the fighting crossed the Sava bridge into Bosnia and Herzegovina during the first days of the Croatian offensive. A further 2,139 Croatian Serbs decided to leave in the following weeks. About 5,000 refugees reached Sector East through Banja Luka and the Federal Republic of Yugoslavia (Serbia and Montenegro) and about 500 moved to Sector North. The immediate repercussions also included an increase in harassment and intimidation of Croat minorities in Sector South as well as in the Banja Luka area of Bosnia and Herzegovina.

10. Further developments in former Sector West are described in my report submitted pursuant to Security Council resolution 994 (1995), in which I observed that the Croatian military offensive in Sector West "... had provided a bitter example of the consequences that occur when conflicting parties forsake peaceful options and resort to war. The fact that the attack took place despite the presence of United Nations peace-keepers in the Sector also underlines the reality that, without the cooperation of the parties, peace-keeping forces cannot keep the peace ..." (S/1994/467).

11. Notwithstanding assurances by the Croatian Government that it would not pursue further military objectives, its military success in Sector West appeared to motivate a similar campaign in Sector South, where in June the Croatian Army and Bosnian Croat forces launched attacks in the Mount Dinara area, 20 kilometres south-east of Knin. By mid-July, Krajina Serb forces and Bosnian forces loyal to Mr. Fikret Abdic had launched a combined offensive against the Bosnian Government Army in the Bihac pocket. A declaration signed in Split on 22 July 1995 by Presidents Tudjman and Izetbegovic and the President of the Federation of Bosnia and Herzegovina committed the Croatian Government to assisting the Bosnian Army in the Bihac pocket and thus increased the risk of further escalation of hostilities (A/50/306-S/1995/609). On 28 July, the combined forces of the Croatian Army and the Croat Defence Council (HVO) succeeded in capturing the towns of Bosansko Grahovo and Glamoc in western Bosnia, severing the main supply road linking Knin to Banja Luka. The Krajina Serbs and the Bosnian Serbs responded by declaring a state of war and mobilizing their respective forces.

12. Between 28 July and 4 August 1995, various concerted efforts were made by me, my Special Representative, Mr. Yasushi Akashi, and the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia in the hope of forestalling a full-scale outbreak of hostilities. These efforts are extensively described in my report to the Security Council of 3 August and my subsequent letter to the President of the Council on 7 August (S/1995/650 and S/1995/666).

13. In the early hours of 4 August 1995, the Croatian Army launched a major military offensive against the Krajina region and, in the course of the

following days, it established control of the whole of Sectors North and South. Approximately 200,000 of the Krajina Serb inhabitants, or 95 per cent of the population of the two sectors, fled into Bosnian Serb-held areas in western Bosnia and most continued their flight to the Federal Republic of Yugoslavia (Serbia and Montenegro).

III. IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 49/43

14. The events of May and August occurred at least in part because the local Serb authorities on the one hand, and the Croatian authorities on the other, failed to extend the necessary cooperation to UNCRO to permit it to implement the mandate authorized by the Security Council in its resolution 981 (1995), thus flouting Security Council resolutions and ignoring General Assembly resolution 49/43. The deliberate attacks launched in May and August with the aim of recovering Sectors West, North and South by force constituted further defiance of those resolutions.

15. Major elements of General Assembly resolution 49/43 have been made irrelevant by these events. Indeed, Croatia's reintegration of former Sectors West, North and South by military force has changed the status of the majority of what were referred to as "occupied territories". These developments have, however, created a different form of crisis, involving the flight of large numbers of ethnic Serbs from those territories into Bosnia and Herzegovina and the Federal Republic of Yugoslavia (Serbia and Montenegro). Protection of the human rights of those who fled and those who remain, and the right of return of those who so wish, are important issues that have arisen from the events in the former Sectors.

A. Sector East

16. The events described above, coupled with other political and military developments within the Republic of Croatia and the contiguous territories of the former Yugoslavia, as well as the frequently declared intention of the Croatian authorities to recover lost territories by other means if negotiations did not succeed, made it very difficult to resume meaningful negotiations and bring them to a successful conclusion.

17. Croatia's offensive against Sectors North and South did not encounter much resistance by Krajina Serb forces nor did it provoke a military response by the Federal Republic of Yugoslavia (Serbia and Montenegro). As regards Sector East, however, the proximity of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the reverses suffered by the Serbs elsewhere could increase the risk of the conflict spreading beyond the borders of Croatia should the Croatian authorities decide to try to recover this Sector by force. Mindful of this possibility, I instructed my Special Representative in August to discuss with the Croatian Government and the local Serb leadership what tasks, if any, it would be useful for UNCRO to continue to perform in Sector East and elsewhere in Croatia. The results of these consultations are set out in my report to the Security Council of 29 September (S/1995/835).

18. An important, if tentative, step towards peace occurred at the beginning of October when, after several weeks of shuttle diplomacy by the United Nations Co-Chairman of the Steering Committee of the International Conference on the Former Yugoslavia, Croatian and local Serb leaders in Sector East agreed on 11 "guiding basic principles" on a settlement of their dispute. The principles call for a transitional authority to be established by the Security Council to administer the region during a transition period. For the first time in Sector East, a high-level representative of the Government of Croatia had met with local Serb leaders. A second round of negotiations took place at the Embassy of the United States of America in Zagreb, on 9 October, but with minor results.

19. Other aspects of resolution 49/43 relate in particular to the cessation of any military and logistic support to the self-proclaimed authorities in the Serbian-controlled parts of Croatia by the Federal Republic of Yugoslavia (Serbia and Montenegro). It has always been extremely difficult to obtain accurate information about such support as severe restrictions on the freedom of movement of UNPROFOR, and more recently UNCRO, have consistently impeded its collection. However, during the months of June and July 1995, there were reports that an estimated 2,500 Serb refugees in the Federal Republic of Yugoslavia (Serbia and Montenegro) were being forcibly mobilized for military duties in the Krajina. The Office of the United Nations High Commissioner for Refugees has protested these violations of the 1951 Geneva Convention on the Status of Refugees. Reports on the mobilization of refugees from the Krajina persisted during the month of August.

20. Only Sector East has a contiguous border with the Federal Republic of Yugoslavia (Serbia and Montenegro). There have been confirmed reports of fuel entering the Baranja across the Batina bridge, and it can be presumed that this happens elsewhere in the Sector. Goods can also enter the Sector by ferry across the Danube, but this has not been directly confirmed by UNCRO. Finally, many roads from Serbia enter the southern part of the Sector, unmonitored by UNCRO, by which food, fuel and weapons can be brought in.

21. Much of Sector East's infrastructure is provided by or linked with the Federal Republic of Yugoslavia (Serbia and Montenegro), including electricity, telephone lines, railway links and postal services. Only limited tertiary education (an agricultural school) is available in the Sector. The most important source of raw materials for use in the Sector's industrial facilities and the prime market for its products has been the Federal Republic of Yugoslavia (Serbia and Montenegro). Other markets have been the areas of Bosnia and Herzegovina under the control of Bosnian Serb forces and, until the events of May and August, Sectors West, North and South in Croatia. The significant economic cooperation between Sector East and the Federal Republic of Yugoslavia (Serbia and Montenegro) is thus based both on historic trade patterns and on recent circumstances.

22. There has been no confirmation that local Serb forces form part of the Army of the Federal Republic of Yugoslavia (Serbia and Montenegro). Concern, however, persists over the activities of Serb paramilitary groups, which have been operating in and from Sector East since fighting began in 1991. A training facility for the so-called "Tigers" commanded by Zeljko Raznjatovic, for example, functions in Erdut, only a few hundred metres from UNCRO Sector

Headquarters, and these forces are reported to have been responsible for recent atrocities in north-western Bosnia.

23. There are no reliable figures concerning the number of Croatian Serb-displaced persons residing in Sector East. In addition to those Serbs who moved there after the hostilities of 1991-1992, local authorities have informed UNHCR that 9,500 people from Sector West have resettled in the Sector since the May offensive and that approximately 10,500 people displaced from Sectors North and South have resettled there since the Croatian offensive in August. The arrival of these displaced persons has contributed to ethnic tensions in Sector East, leading a number of Croats to leave either by choice or because of threats and intimidation.

B. Refugees and displaced persons

24. According to the nation-wide registration of refugees and displaced persons carried out by the Croatian authorities in the summer of 1994, but not verified by independent sources, the number of registered persons displaced within Croatia was around 198,000. Of those, 94 per cent were Croats, 2 per cent Serbs, 2 per cent Hungarians and the remaining 2 per cent people of other ethnic origins. Out of this total, approximately 76,000 were displaced as a result of the fighting in and around Sector East. About 6,000 people were displaced from areas outside the Sectors, but in close proximity to the border with Bosnia and Herzegovina. These movements were largely the result of shelling by the Bosnian Serbs. The balance of those displaced, about 116,000 people, came from the former Sectors North, South and West.

25. In the past five months, some 900 to 1,000 Croat displaced persons have returned to their homes in former Sector West. There are no reliable estimates of the number of displaced Croats who have returned to their homes in former Sectors North and South, but the number is believed to be small. Ongoing "mopping-up operations" by the Croatian Army and police in former Sectors North and South, the looting and burning of Serb houses, the lack of economic prospects in the Krajina and the uncertain security environment, including the presence of mines, account for the small number of displaced Croats who have so far resettled in the three former Sectors. Additionally, of the about 15,000 Bosnian Croats who fled the Banja Luka area in the past two months, some 5,000 have been settled in Western Slavonia, while others have been resettled in former Sectors North and South as well as areas of western Bosnia recently captured from the Bosnian Serbs. The resettlement of these people in the former Sectors is changing the demographic characteristics of the areas and may inhibit the return of the Croatian Serbs.

26. In the past five months, some of the biggest demographic displacements since the beginning of the Yugoslav crisis have taken place. Since early May, more than 480,000 people have been forced from their homes. The movements directly involving Croatia include:

(a) Over 10,000 Croatian Serbs from Sector West into the Banja Luka region and Sector East in May;

(b) Approximately 200,000 Croatian Serbs who fled from Sectors North and South in August, 170,000 of whom found refuge in the Federal Republic of Yugoslavia (Serbia and Montenegro) and the rest in the Banja Luka region or Sector East;

(c) Some 25,000 Bosnian Muslim followers of Fikret Abdic who fled the Bihac pocket into Croatia in August;

(d) More than 20,000 Croat and Muslim minorities from the Banja Luka region expelled by the Bosnian Serbs into Croatia since August.

27. The exodus of 200,000 Krajina Serbs fleeing the Croatian offensive in early August created a humanitarian crisis of major proportions. It is now estimated that only about 3,000 Krajina Serbs remain in the former Sector North and about 2,000 in the former Sector South. In the former Sector West, about 1,200 Serbs remain in the area previously under Serb control, with 4,000 to 5,000 Serbs remaining in the northern part of the Sector, which has always been under Croatian control. In the former Sector West, there have been signs of a small return of the Serb population, involving perhaps about 50 individuals. According to Croatian officials, the Serb population in the Republic of Croatia fell from 12 to less than 3 per cent of the total population as a result of the "liberation of the occupied territories".

28. The Croatian Government has consistently maintained that Serbs are free to live in Croatia and that those who fled are welcome to return. However, the United Nations High Commissioner for Human Rights, UNHCR and UNCRO, as well as a number of Member States and independent human rights organizations, have expressed their concerns over the fact that serious violations of human rights have taken place and have continued to occur after the military operations had been successfully concluded. These violations, together with a number of recently adopted executive and legislative measures, appear de facto to restrict the civil, political, economic and social rights of the Croatian Serb population and the refugees' right to return, in contravention of international conventions (see sect. C below). The High Commissioner for Human Rights raised these matters in two letters to President Tudjman on 18 August and 2 October 1995. In his letter of 2 October, he particularly urged that the Croatian Government should not deter the return of the local Serb population in safety and dignity.

29. Difficulties faced by those who wish to return were exemplified in mid-September, when Croatian border authorities would not allow 257 Serbs to enter Croatia at Davor in order to return to former Sector West, on the grounds that the crossing-point was designated only for Croat and Muslim refugees from Bosnia and Herzegovina.

C. Human rights

30. On a number of occasions, the Security Council has expressed concern at the grave situation of refugees and persons displaced during the Croatian offensives. In particular, under Council resolutions 990 (1995) and 1009 (1995), UNCRO is charged both with monitoring and protecting human rights and with seeking corrective actions in the case of human rights abuses. On

7 September, the Council reiterated its demand that Croatia respect fully the rights of the local Serb population including the right to remain or return in safety (S/PRST/1995/44).

31. On 3 October, the Security Council, inter alia, again reiterated that demand and further demanded that the Government investigate all reports of human rights violations and take appropriate measures to put an end to such acts. It also called on Croatia to cooperate with international humanitarian organizations in the creation of conditions conducive to the repatriation of refugees in safety and dignity (S/PRST/1995/49).

32. Following the Croatian offensive in Sector West, a number of human rights problems were signalled and the field officers of the Centre for Human Rights conducted an immediate on-site investigation. The Special Rapporteur of the Commission on Human Rights published his findings on these events in his periodic report of 5 July 1995 (E/CN.4/1996/6). The investigation revealed evidence of members of the civilian population having been killed during the offensive, and a number of cases of physical and verbal abuse and of other forms of degrading treatment of detainees. In his report, the Special Rapporteur concluded that serious violations of human rights and humanitarian law had occurred during and after the offensive in Sector West.

33. More than eight weeks after the Croatian offensive in Sectors North and South, widespread violations of human rights and international humanitarian law continue to be reported by a number of Member States, international human rights organizations, regional organizations (including the European Union), UNCRO and UNHCR. In this connection, United Nations Peace Forces established human rights action teams under the leadership of the field officers of the Centre for Human Rights to conduct immediate on-site investigations. The teams found evidence of extrajudicial executions, disappearances, ill treatment, harassment and the systematic and widespread destruction of houses and entire villages carried out by members of the Croatian Army and internal security forces in the Krajina against the remaining civilian population, mostly elderly men and women. As of the end of September, the European Community Monitoring Mission (ECMM) documented that 73 per cent of Serb houses were burned and looted in 243 villages investigated. In early October, accounts of armed robberies and personal threats were reported with increasing frequency, along with crimes against property.

34. The Croatian authorities have maintained that these acts were committed by uncontrolled elements. Yet international observers, including members of the international press, have directly witnessed the presence of the Croatian Army and special police units in several instances. It was only recently, after significant international criticism, that President Tudjman announced Croatian investigations into 611 cases of looting, 27 bombings and 7 murders. The authorities are also investigating 36 murder cases, about which President Tudjman stated that it was not clear whether they were committed in war situations and mopping-up operations or by "unbalanced individuals".

35. Confirmed reports of continuing human rights abuses have created a climate of deep apprehension that is not conducive to the return of those who wish to do so. There are, as yet, no reliable guarantees by the Croatian Government that

returnees will enjoy safety and security. The Croatian authorities have themselves warned against the return of Serbs to their homes in the Krajina because of the uncertain security situation and have said that mass returns must await a final political settlement.

36. Furthermore, a number of executive and legislative measures have been adopted since August that appear to put in doubt the stated intention of the Croatian Government to facilitate the return of refugees. These include an executive order dated 31 August, which was subsequently slightly modified by the Croatian parliament, on the temporary expropriation and control by the Government of certain "abandoned" property in former Sectors North, South and West. The law also applies to property situated in any part of Croatia that is owned by individuals who have left the country since 17 August 1990 or reside in Sector East, the Federal Republic of Yugoslavia (Serbia and Montenegro) or areas of Bosnia and Herzegovina under the control of Bosnian Serb forces. In addition, the law applies to all property owned by citizens of the Federal Republic of Yugoslavia (Serbia and Montenegro). The deadline for claims of exemption was at first 30 days from 4 September, but was subsequently extended to 90 days.

37. Under the law, property owners are required to claim their property within 90 days "for possession and usage". Given that the return of Croatian Serb refugees within that time-limit appears neither feasible nor, under current circumstances, advisable, this requirement constitutes a potentially insurmountable obstacle to such claims by Serbs who are currently outside Croatia. This particular aspect was stressed by the High Commissioner for Human Rights in his letter of 2 October to President Tudjman. The Security Council, on 3 October, also called upon the Government of Croatia to lift any time-limit on the return of refugees to Croatia to reclaim their property (S/PRST/1995/49).

38. Other legislative measures adopted by the Croatian Parliament before its dissolution in early September included modifications to the electoral law that reduce the number of Croatian Serb representatives from 12 to 3 (elections are now expected to take place on 29 October); the suspension of constitutional provisions regarding autonomy and the establishment of Serb majority districts (Knin and Glina); and a law calling for a new population census to be held in 1996.

IV. OBSERVATIONS

39. Croatia's "reintegration" of the former Sectors West, North and South by military force has eliminated most of what was referred to as "occupied territories" in General Assembly resolution 49/43. It has equally eliminated the need for a substantial United Nations military presence in those areas. I have communicated this view to the Security Council in my reports of 23 August and 29 September (S/1995/730 and S/1995/835).

40. However, continuing human rights violations and security problems have created an atmosphere that is hostile to any return of the refugees and this may affect the ongoing negotiations in Sector East. The recently adopted executive and legislative measures in Croatia, including the law on property, appear to

impede the participation of the Croatian Serbs in the civil, political, economic and social life of the country. Indeed, they seem incompatible with Croatia's stated intention to facilitate the return of those who wish to do so.

41. The ongoing negotiations concerning the future of Sector East are of great importance not only in themselves but also in the context of an overall settlement of the crisis in the former Yugoslavia. Given that no precedent yet exists for the peaceful reintegration of Serb-controlled territories in Croatia, it is important that all concerned should keep to their undertakings and that the international community should continue to pursue peaceful solutions that guarantee respect for the human rights of all peoples throughout the former Yugoslavia.